

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 30 2003

OFFICE OF
MANAGING DIRECTOR

Mr. David Tillotson
4606 Charleston Terrace, NW
Washington, D.C. 20007-1911

Re: Radio Station WMAC
Fee Control No. 00000RROG-03-079
Bill No. 02-MMB0698

Dear Mr. Tillotson:

This is in response to your request that the Commission's Office of Managing Director reconsider its decision denying your request for waiver of the penalty charged for late payment associated with the fiscal year (FY) 2001 regulatory fee for U.S. Broadcasting LP's Radio Station WMAC. Our records reflect that we have received U.S. Broadcasting's regulatory fees of \$12,840.00, but we have not received the late payment penalty of \$25.00 in connection with a \$100.00 underpayment. Our records indicate that the Commission received \$12,740 of the \$12,840 FY 2001 regulatory fees for U.S. Broadcasting's stations in August, 2001. On September 18, 2002, we received the remaining \$100.00 due. You assert in your request that you underpaid WMAC's FY 2001 regulatory fee by \$100 due to a typographical error.

You indicate in your request for reconsideration that U.S. Broadcasting received a bill from the Commission for alleged failure to pay the regulatory fees for three of its eight stations. You state that U.S. Broadcasting in fact paid the fees for the three stations, but that in the process of checking your records in response to that bill, you determined that there had been an underpayment of \$100.00 for WMAC's fee, which you subsequently paid.

While we are sympathetic to your assertion that the \$100.00 deficiency in WMAC's payment was due to an inadvertent error which you initially discovered, this is not a sufficient basis upon which to grant reconsideration. We are assessing the \$25.00 late charge pursuant to the express requirements contained in Section 9 of the Act. As we indicated in our original denial of your waiver request, the Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. §159(c)(1). It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Thus, U.S. Broadcasting was responsible for payment of the full 2001 regulatory fee of \$12,840 on September 26, 2001, the final date of the regulatory fee filing window for FY 2001.

Mr. David Tillotson

2.


We find that U.S. Broadcasting did not meet its obligation to file its full regulatory fees in a timely manner. We therefore affirm our denial of your request for rescission of the late charge penalty for late payment of \$100.00 of WMAC's fiscal year 2001 regulatory fees.

Payment of US Broadcasting's late payment penalty of \$25.00 is now due. The late payment charge must be filed together with a copy of Bill No. 02-MMB0698 within 30 days from the date of this letter. You are advised that continued failure to pay the penalty may subject the licensee, US Broadcasting, to further sanctions, including the initiation of a proceeding to recover the penalty and any accrued interest pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, Report and Order, 16 FCC Rcd 13,525, 13, 537 (2001); *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, FCC 03-184, released July 25, 2003, ¶34 (emphasizing Commission's enforcement authority regarding failure to pay); *see generally* 47 C.F.R. § 1.1164.

If you have any questions concerning this matter please contact the Revenue and Receivable Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", written over a horizontal line.

 Mark A. Reger
Chief Financial Officer

00000 RROG-03-079

DAVID TILLOTSON
Attorney at Law

4606 Charleston Terrace, N.W.
Washington, DC 20007-1911

Tel: (202) 625-6241

Fax: (202) 965-2018

Email dtlaw@starpower.net

February 6, 2003

Mr. Andrew Fischel
Managing Director
Federal Communications Commission
Washington, DC 20054

Re: Fee Control No. 00000RROG-02-106
Bill No. 02-MMB0698

① 2dy letter
② Path
③ 3002 tickler

FILED
FEB 11 2003
FBI - WASH DC

Dear Mr. Fischel:

This is a request for reconsideration of the denial of my request for a waiver of the \$25.00 late fee assessed against U.S. Broadcasting, L.P. for initially underpaying its FY 2001 regulatory fee for Station WMAC by \$100.

As explained in my request for waiver of the late fee, the underpayment was due to a typographical error. If the FCC's handling for fee payments were perfect, perhaps it would have the moral authority to assess late fees against licensees who make a good faith effort to pay on time yet make an inadvertent error in the payment. However the FCC's record is far from perfect. In fact it is atrocious.

The original bill to U.S. Broadcasting, L.P. for underpayment of regulatory fees issued 11 months after the fee payment deadline was for \$1,812.50 based on an alleged failure of U.S. Broadcasting L.P. to have paid the 2001 regulatory fees for three of its eight stations. Upon checking my records with respect to fee payments, I discovered that U.S. Broadcasting had paid its regulatory fees for all three stations for which the FCC alleged no payment had been made, but I also discovered that there had been a \$100 underpayment of the WMAC fee. My clients pay me for my time at the rate of more than \$200/hour. I spent nearly an hour searching my retired records to ascertain whether U.S. Broadcasting, L.P. had failed to pay fees for three of its stations and then faxing the proof of payment with a covering letter to your office, and I billed U.S. Broadcasting, L.P. for my time. As a matter of fairness and equity, the time I spent establishing that the FCC's bill was in error should have been

paid for by the FCC. But unfortunately there is no mechanism for a regulatee or citizen who is put to trouble and expense to correct a government error to recover his, her or its expenses. However, balancing the magnitude of the FCC's error, and the cost to U.S. Broadcasting, L.P. of dealing with that error against the minor underpayment due to a typographical error and the late fee that the FCC seeks to collect, surely you will agree that the FCC should waive the late fee as partial compensation for the expenses that U.S. Broadcasting, L.P. incurred as a result of the FCC's error.

Moreover, it is significant to point out that the FCC's error in billing U.S. Broadcasting, L.P. for fees already paid was not an isolated one. At least five of my clients in addition to U.S. Broadcasting, L.P. were billed in August of 2002 for regulatory fees that they paid on time in September of 2001. In each case, the clients sent me the bills because I had assumed the responsibility of getting their payments to the FCC on time, and in each case I had to dig in my files for the proof of payment and then fax it to your office with an explanatory letter. Each of my clients was billed for my time spent in proving that the FCC's bills were in error. And last year was not the first time this occurred. In each prior year for the last several years a few of my clients have received bills for regulatory fees timely and fully paid that I have had to deal with on their behalf.

The amount at issue, \$25, is trivial. But the principle at issue -- that as a matter of simple fairness the FCC should not assess a late fee for a minor underpayment against a licensee who has been put to the trouble and expense of responding to an erroneous bill for regulatory fees -- is not trivial. That's why I am writing this request for reconsideration "pro bono" and why I will fight the fee, pro bono, for as long as the FCC persists in trying to collect it.

Sincerely,



David Tillotson